

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VICTORIA ANN RODRIGUEZ, ERNIE
STEVE HERNANDEZ and MARIE
HERNANDEZ, as Beneficiaries of the
Estate of Ernest John Hernandez,

Plaintiffs,

v.

PHH MORTGAGE CORPORATION;
CLEAR RECON CORP; LIBERTY
HOME EQUITY SOLUTIONS, INC.,

Defendants.

Case No. 1:22-cv-00619-AWI-HBK

VOLUNTARY DISMISSAL UNDER FED. R.
CIV. P. 41 (a)(1)(A)(ii) AS TO PHH
MORTGAGE CORPORATION AND HOME
EQUITY SOLUTIONS

(Doc. No. 12)

Plaintiffs and Defendant PHH Mortgage Corporation, as successor in interest to Liberty Home Equity Solutions, (collectively the “Parties”) filed a Stipulation of Dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) on December 28, 2022. (Doc. No. 12). The Parties state they are dismissing this action *with prejudice*. (*Id.*) (emphasis added). In light of the stipulated dismissal, this action is terminated by operation of law without further order from the Court as to PHH Mortgage Corporation, as successor in interest to Liberty Home Equity Solutions. Fed. R. Civ. P. 41(a)(1)(A)(ii).

On May 20, 2022, Defendant PHH, Mortgage Corporation removed this civil action from Stanislaus County Superior Court. (Doc. No. 1). Plaintiffs’ complaint alleged four causes of

1 action against Defendants PHH Mortgage Corporation, Clear Recon Corporation, Liberty Home
2 Equity Solutions, and Mortgage Electronic Registration Systems, Inc. (Doc. No. 1-1). On
3 November 17, 2022, Plaintiff filed a notice of voluntary dismissal of this action with prejudice
4 under Fed. R. civ. P. 41(a)(1)(A)(i) as to Defendant Mortgage Electronic Registration Systems,
5 Inc. (Doc. No. 9). According to the notice of removal, Defendant Clear Recon Corporation filed
6 a Declaration of Non-Monetary Status pursuant to Cal. Civ. Code § 2924(b).¹ (Doc. No. 1 at 5).
7 Notably, the pleadings removed from the Superior Court did not include Clear Recon's
8 Declaration. As a result, the Court is unable to determine on what date Clear Recon filed its
9 Declaration and whether fifteen days has elapsed from the filing of the Declaration to determine
10 whether timely objections were filed and/or whether Defendant Clear Recon is deemed a nominal
11 defendant.

12 Accordingly, it is hereby ORDERED:

13 1. The Clerk of Court shall reflect the Parties stipulated dismissal of this action with
14 prejudice as to PHH Mortgage Corporation, as successor in interest to Liberty Home Equity
15 Solutions, and terminate these defendants from the docket.

16 2. Within **five (5) days**, Plaintiffs shall advise the Court whether this action remains
17 pending against Defendant Clear Recon Corporation or file an appropriate notice pursuant to Fed.
18 R. Civ. P. 41(a)(1)(A)(i) as to this remaining defendant.

19 Dated: January 7, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE

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26 ¹ California Civil Code Section 2924 provides if "a trustee under a deed of trust is named in an action or
27 proceeding in which that deed of trust is the subject," and "the trustee maintains a reasonable belief that it
28 has been named in the action or proceeding solely in its capacity as trustee, and not arising out of any
wrongful acts or omissions on its part in the performance of its duties as trustee, then, at any time, the
trustee may file a declaration of nonmonetary status." Cal Civ. Code. § 2924(b). The opposing party has
fifteen days from the filing of the declaration of nonmonetary status to object. Cal Civ. Code § 2924(c).